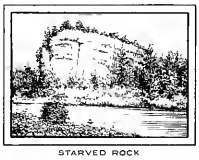

STARVED ROCK

HISTORY

OF THE

ORDINANCE OF 1787.

Publications

OF THE

Historical Society of Pennsylvania.

ORDINANCE OF 1787.

PRESENTED TO THE PUBLICATION FUND.

By a Resolution of the Society, any one who shall pay to its Treasurer twenty dollars, obtains the right to receive, during life, one copy of each publication.

Amount of Fund $11,500.

HISTORY

OF THE

ORDINANCE OF 1787.

BY

EDWARD COLES,

FORMERLY GOVERNOR OF THE STATE OF ILLINOIS;
MEMBER OF THE HISTORICAL SOCIETY OF PENNSYLVANIA.

READ BEFORE

THE HISTORICAL SOCIETY OF PENNSYLVANIA,

June 9, 1856.

PRESS OF THE SOCIETY.
1856.

PHILADELPHIA:

T. K. AND P. G. COLLINS, PRINTERS.

June 9, 1856.

At a meeting of the Historical Society, held this evening, it was, on motion of William M. Meredith, unanimously

Resolved, That the Secretary be directed to convey to Edward Coles the thanks of the Society for his valuable Historical Sketch of the "Ordinance of 1787," prepared by him at their request, and read this evening; and that the author be requested to furnish a copy of the same for preservation in the archives of the Society, and for publication.

Extract from the minutes.

FRANK M. ETTING,
Rec. Secretary.

ORDINANCE OF 1787.

TO THE HISTORICAL SOCIETY OF PENNSYLVANIA.

I AM sensible of the compliment paid me by the passage of the Resolution of the Society, requesting me to prepare for it an historical sketch of the celebrated Ordinance of 1787, and regret that sedentary occupation, and particularly the labor of the pen, being prejudicial to my health, will prevent my making such a response to the call as the highly interesting character of the subject requires, or fulfilling the expectations doubtlessly entertained by the Society when the resolution was adopted. This state of things will disable me from making the researches necessary to a full exposition of facts, or even writing out my recollections of them to the extent desired. It will require me to economize my labors in every way I can, and particularly the prejudicial one of writing, and content myself with developing only such facts as are essential to understanding the history of the Ordinance. To this I must add, as a further barrier to my doing justice to the subject, that I cannot procure, here, a history of Indiana, or indeed anything that deserves that name of any of the subdivisions into which the Northwestern Territory was divided; which compels me to rely mainly for local facts on my memory and personal memoranda. With this explanation, I will proceed at once to comply with the request of the Historical Society of Pennsylvania.

The country situated to the northwest of the Ohio River, long known as the Northwestern Territory, was claimed by Virginia, except a small part of it bordering on Lake Erie, which was claimed by Connecticut. These two States ceded all their claims to the United States, and thus they obtained a perfect title to the whole. The deed of cession from Virginia was dated March 1, 1784; and was signed, among others, by Jefferson and Monroe, afterwards Presidents of the United States. It ceded all her right and title to the soil and jurisdiction to the United States, and made many stipulations; among others, "That the French and Canadian inhabitants and other settlers of the Kaskaskias, St. Vincents, and the neighboring villages, who have professed themselves citizens of Virginia, shall have their possessions and titles confirmed to them, and be protected in the enjoyment of their rights and liberties." It also reserved 150,000 acres of land near the rapids of the Ohio for that portion of her State troops which had reduced the country, and about 3,500,000 acres of land between the rivers Scioto and Little Miami for bounties to her troops on the "Continental Establishment." These facts are mentioned, and should be borne in mind, as they will be shown to have an influence in forming the opinions and explaining the conduct of a portion of the inhabitants under the operation of the Ordinance. In consequence of the objectionable stipulations made by Virginia, as to the divisions of the territory into States, the deed of cession was referred back to that State, with a recommendation from Congress, that these stipulations should be altered. On December 30, 1788, Virginia assented to the wish of Congress, and formally ratified and confirmed the fifth article of compact, which related to this subject, and tacitly gave her assent to the whole ordinance of

1787. A few days after the execution of the deed of cession by Virginia, at the instance of Mr. Jefferson, a committee was raised, consisting of Thomas Jefferson, of Va., Samuel Chase, of Maryland, and David Howell, of Rhode Island, for the purpose of organizing and providing for the Government of the newly acquired territory. Mr. Jefferson, as chairman of the committee, made a report, now to be seen in his handwriting among the archives of Congress in the Department of State at Washington. It provides, "that the territory ceded or to be ceded by individual States to the United States," "shall be formed into distinct States," the names of which were given, and the boundaries defined; and the divisions thus made contemplated and embraced all the western territory lying between the Florida and Canada lines. That is, it included the territory which had been "ceded" to the northwest of the Ohio River, and that "to be ceded" to the southwest of that River, or elsewhere, by individual States to the United States. It also provided for a temporary or Territorial Government; authorized the adoption of the laws of any other State: to have a representative on the floor of Congress, with the right of debating but not of voting, &c. &c., until the inhabitants should amount to 20,000, after which it authorized the formation of a permanent or State government; and for its admission into the Union: Provided both the Territorial and State Governments should be established on the following principle as a basis, which were declared to be articles of a charter of compact, to stand as fundamental constitutions between the thirteen original States and the new States to be formed, unalterable but by the joint consent of the United States, and the particular State with which such alteration was proposed to be made: 1st. That they shall forever remain

a part of the United States of America. 2d. That in their persons, property, and territory, they shall be subject to the Government of the United States in Congress assembled, and to the articles of confederation in all those cases in which the original States shall be so subject. 3d. That they shall be subject to pay a part of the Federal Debt, contracted or to be contracted, to be apportioned on them by Congress according to the same common rule and measure by which apportionment thereof shall be made on the other States. 4th. That their respective Governments shall be republican in form, and shall admit no person to be a citizen who holds any hereditary title. 5th. That after the year 1800 of the Christian era, there shall be neither slavery nor involuntary servitude in any of the said States, otherwise than in punishment of crimes whereof the party shall have been duly convicted to have been personally guilty.

Before proceeding further in making references and quotations, I must inform those who have not had occasion to examine the Journals of the Old Congress, that they are so imperfectly made out, with so many omissions, that it is impossible to trace the proceedings, and fully to understand what took place in forming the Ordinance or any other measure of the kind. It may also be well to state, in order to enable all to understand the Journals, that the Old Congress, under the Articles of Confederation, voted by States; that to entitle a State to vote it must have at least two members present; and that for the adoption of a measure, at least seven States (the majority of the whole number of the thirteen States) must vote in favor of it; indeed in some important cases nine States were required.

Previous proceedings are to be inferred from the following entry in the Journals, though I have not been able to find them. April 19, 1784, "Congress took

into consideration the report of a committee consisting of Mr. Jefferson, Mr. Chase, and Mr. Howell, to whom was recommitted their report of a plan for a temporary Government of the Western Territory; when a motion was made by Mr. Spaight, seconded by Mr. Read, to strike out the following paragraph: 'That after the year 1800 of the Christian era there shall be neither slavery nor involuntary servitude in any of the said States, otherwise than in punishment of crimes whereof the party shall have been convicted to have been personally guilty.' And on the question, shall the words, moved to be struck out, stand. The yeas and nays being required by Mr. Howell:

New Hampshire—Mr. Foster, *ay;* Mr. Blanchard, *ay* . *Ay.*
Massachusetts—Mr. Gerry, *ay;* Mr. Partridge, *ay* . *Ay.*
Connecticut—Mr. Sherman, *ay;* Mr. Wadsworth, *ay* . *Ay.*
New York—Mr. De Witt, *ay;* Mr. Paine, *ay* . . *Ay.*
Rhode Island—Mr. Ellery, *ay;* Mr. Howell, *ay* . . *Ay.*
New Jersey—Mr. Dick, *ay*
Pennsylvania—Mr. Mifflin, *ay;* Mr. Montgomery, *ay;* Mr. Handy, *ay* . . . . . *Ay.*
Maryland—Mr. McHenry, *no;* Mr. Stone, *no* . . *No.*
Virginia—Mr. Jefferson, *ay;* Mr. Hardy, *no;* Mr. Mercer, *no* . . . . . *No.*
North Carolina—Mr. Spaight, *no;* Mr. Williamson, *ay Divided.*
South Carolina—Mr. Read, *no;* Mr. Beresford, *no* . *No.*

So the question was lost and the words were struck out."

That is, although there were six States in favor of retaining the clause, out of the ten States that voted, it was nevertheless struck out, because there was wanted the vote of one more State to make a majority of all the States then in the confederation.

Congress resumed the consideration of the plan of the Government of the Territories, from day to day, until April 23, 1784, when it was agreed to, as amended,

with the concurrence of every State (except Delaware and Georgia, not represented), and of every member of Congress except the two from South Carolina.

The plan of Government thus adopted by Congress was founded on one reported by Mr. Jefferson, with some alterations. The chief of these consisted in striking out the clauses prohibiting slavery, as seen above, inhibiting citizens from holding any hereditary title, and giving names and boundaries to the new States; and also in adding to the fundamental articles of compact, as drawn by Mr. Jefferson, that the new States should in no case interfere with the primary disposal of the soil by the United States, that no tax should be imposed on lands the property of the United States, and that the lands of non-residents were never to be taxed higher than the lands of residents. With these exceptions, the plan adopted by Congress, April 23, 1784, was substantially the same, and for the most part, in the words of the one submitted to Congress by Mr. Jefferson. Fourteen days after its passage, viz: May 7, 1784, Mr. Jefferson was appointed minister to France and vacated his seat in Congress.

The next notice of the subject I have been able to find in the journals of Congress, is on the 16th of March, 1785, when "a motion was made by Mr. King, seconded by Mr. Ellery, that the following proposition be committed: that there shall be neither slavery nor involuntary servitude in any of the States described in the resolve of Congress of the 23d of April, 1784, otherwise than in punishment of crimes whereof the party shall have been personally guilty; and that this regulation be an article of compact, and remain a fundamental principle of the Constitutions between the thirteen original States and each of the States described in the said resolve of the 23d of April, 1784."

On the question for commitment, the yeas and nays being required by Mr. King, eight States, viz: New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, and Maryland voted in the affirmative; and three States, viz: Virginia, North Carolina, and South Carolina voted in the negative. Georgia had but one member present, and of course, her vote was not counted. To what committee this motion was referred, or what further was done on the subject is not stated in the journal.

On the 7th of July, 1786, this entry is made: "Congress took into consideration a report of a grand committee, to whom, among other things, was referred a motion of Mr. Monroe respecting the cession of Western Territory, and forming the same into States;" when it was "resolved that it be and is hereby recommended to the Legislature of Virginia, to take into consideration their act of cession, and revise the same, so far as to make such a division of the territory of the United States lying northwardly and westwardly of the river Ohio, into distinct and republican States, not more than five nor less than three," &c.

The next entry in the journal which has reference to the subject is under date of September 29, 1786, when, "Congress proceeded in the consideration of an Ordinance for the government of the Western Territory, reported by Mr. Johnson, Mr. Pinckney, Mr. Smith, Mr. Dane, and Mr. Henry." On the 4th of October following, "Congress resumed the consideration of the Ordinance for the government of the Western Territory." On May 9, 1787, "Congress proceeded in the second reading of the Ordinance for the government of the Western Territory." On May 10, 1787, the third reading was postponed. On July 11, 1787, "the committee consisting of Mr. Carrington, Mr. Dane, Mr. R. H. Lee,

Mr. Kean, and Mr. Smith, to whom was referred the report of a committee touching the temporary government of the Western Territory, reported an Ordinance for the government of the Territory of the United States northwest of the river Ohio; which was read a first time."

The next day it was read a second time, and the day following, July 13, 1787, it was read a third time and passed by the following vote: "the yeas and nays being required by Mr. Yates.

Massachusetts—Mr. Holton, *ay;* Mr. Dane, *ay* . .	*Ay.*
New York—Mr. Smith, *ay;* Mr. Haring, *ay;* Mr. Yates, *no*	*Ay.*
New Jersey—Mr. Clarke, *ay;* M. Scheurman, *ay* . .	*Ay.*
Delaware—Mr. Kearney, *ay;* Mr. Mitchell, *ay* . .	*Ay.*
Virginia—Mr. Grayson, *ay;* Mr. R. H. Lee, *ay;* Mr. Carrington, *ay*	*Ay.*
North Carolina—Mr. Blount, *ay;* Mr. Hawkins, *ay* .	*Ay.*
South Carolina—Mr. Kean, *ay;* Mr. Huger, *ay* . .	*Ay.*
Georgia—Mr. Few, *ay;* Mr. Pierce, *ay* . . .	*Ay.*

So it was resolved in the affirmative."

The Ordinance as it thus finally passed Congress with such extraordinary unanimity, first provides rules for the inheritance and conveyance of property; it then provides for the appointment of the Governor, Judges, and other officers of the temporary or territorial governments, and defines their powers and duties; it also provides for the election of a delegate to Congress, to have the right of debate but not of voting during the temporary government. It then goes on to say, "for extending the fundamental principles of civil and religious liberty," &c. "It is hereby ordained and declared, by the authority aforesaid, that the following articles shall be considered as articles of compact between the original States, and the people and States in the said territory, and forever remain unalterable unless by common con-

sent." Of these the first article secures the religious freedom of the inhabitants: the second secures to them the right of the writ of habeas corpus, the trial by jury, the inviolability of contracts, &c.: the third declares that schools and the means of education shall be encouraged, and good faith shall be observed towards the Indians: the fourth provides that the Territories shall remain forever a part of the United States; pay their just proportion of the Federal debts and expenses; not interfere with the primary disposal of the soil by the United States, nor tax non-resident proprietors higher than residents; and that the navigable waters leading into the Mississippi and St. Lawrence rivers, and the carrying places between the same, shall be common highways and forever free to all the citizens of the United States: the fifth provides for a division of the Territory into States and their admission into the Union when they shall have 60,000 inhabitants, on an equal footing with the other States, provided their constitutions be republican; and the sixth ordains that there shall neither be slavery nor involuntary servitude in the said Territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted: Provided always that any person escaping into the same from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or services as aforesaid. There is then added a repeal of the resolutions of April 23, 1784.

A comparison of the plan of government, as drawn by Mr. Jefferson, and that finally adopted by Congress, both of which I have endeavored briefly to sketch, will show—1st. That with Mr. Jefferson, originated the idea of a compact between the original States and the new States to be formed out of the territories, unalterable

but by their joint consent. 2nd. That his plan of government or ordinance was intended to apply to all territory, ceded or to be ceded by individual States to the United States; while the ordinance passed by Congress confined it to territory previously acquired—that is to the territory northwest of the river Ohio. 3d. That by Mr. Jefferson's plan or ordinance the territory was to be formed into distinct States, whose names and boundaries were designated; with a provision that they might form a temporary government; adopt the constitution and laws of any one of the original States, such laws being, however, subject to alteration by themselves; have a representation in Congress, though without a vote; and when they should have 20,000 inhabitants, form a permanent State government, and be admitted into the Union, on an equal footing with the original States—all which provisions were those which formed substantially the ordinance as finally adopted by Congress, though it was so far qualified, that a State could not claim a right of admission into the Union until it had 60,000 inhabitants; to which were added in more detail the form of territorial government and some specific regulations in regard to the inheritance and conveyance of property. 4th. That to the provisions which Mr. Jefferson originated and inserted in his plan, making it a matter of compact that the new States should forever remain part of the United States; be subject to the government of Congress, and the articles of confederation; bear their share of the federal debts; adhere to a republican form of government, and admit no one to citizenship who should hold an hereditary title—to these the Ordinance as adopted by Congress added provisions to protect the public lands from interference and taxation; to preserve as highways some of the great rivers; and to enlarge the enumeration of the personal rights

of the citizen. 5th. That the most important clause in Mr. Jefferson's plan—that which provided that "after the year 1800 of the Christian era there should be neither slavery, nor involuntary servitude, in any of the said States, otherwise than in punishment of crimes, whereof the party shall have been duly convicted to have been personally guilty"—was adopted by Congress with no change, except the omission of the postponement of its operation until 1800, and the introduction of the clause for the restoration of fugitive slaves.

Some of the above particulars would not have been stated so fully but for a claim which has been made to the authorship of the ordinance on behalf of Nathan Dane, of Massachusetts. To show a misconception somewhere, and in a word, the groundless character of this claim, it is only necessary to state that Mr. Dane took his seat in Congress for the first time, on the 17th of November, 1785, more than eighteen months after the ordinance had been conceived and brought forth by its great author, and been adopted by Congress, with certain alterations, the principal one of which, on motion of Mr. King, had been in effect cancelled and the original provision restored nearly in the words of Mr. Jefferson, eight months before Mr. Dane took his seat in Congress. The Journals of Congress do not show that Mr. Dane had any particular part in forming the ordinance, beyond serving on two of the several committees to which it was referred. What he did on those committees, I have no means of knowing. He may have been active and instrumental in working into the ordinance his favorite provisions about titles to property; and thus his phrase may be rendered intelligible, where he says that he had "formed it mainly from the laws of Massachusetts."

Having given this sketch of the origin and formation

of the ordinance, I will now trace the history of its practical operation, to which I will add, the local opposition it encountered, and the general assent and sanction it received from Congress and from the Union.

To form a correct idea of what passed in relation to the ordinance, it is necessary to recall to mind the efforts made by France to encompass and restrict the western frontiers of the English Colonies, by establishing a cordon of forts with surrounding settlements connecting its colonies of Louisiana and Canada; and that France claimed and occupied much of the territory to the eastward of the Mississippi River, prior to 1763, when it was ceded to England; after which it formed parts of the English slave-holding colonies. When these facts are considered, it will not excite surprise that the inhabitants of the settlements, thus formed and governed, should have been favorable to the existence of slavery, as it was established by the French laws of Louisiana, and by the laws of the English Colonies to which the country east of the Mississippi River became attached by the cession of France in 1763. From the first settlement, therefore, by the white race, of the country northwest of the Ohio River, by the French at and in the vicinity of Kaskaskia, about the year 1682, and by a company of emigrants from Virginia about one hundred years subsequently, slavery had existed, and was as lawfully established as it had been under the laws of Louisiana or of those of Virginia. It was the knowledge of this existence of slavery, and his known opinion in favor of a prospective rather than a sudden abolition, that induced Mr. Jefferson to use the phrase he did in the ordinance—"That after the year 1800 of the Christian era there shall be neither slavery nor involuntary servitude in any of the said States, &c." This provision recognized the existence of slavery, and contemplated

the toleration of it in those States for sixteen years (he drew the ordinance in 1784), when it was to cease. From this it is clearly seen that the illustrious author of the ordinance intended it to abolish the then existing state of slavery, as well as to prohibit its ever being tolerated in the country northwest of the Ohio River.

To these reasons for the existence then of negro slavery, may be added the fact of Virginia having granted land to many of her citizens who had served in the wars carried on against the Indians, and in this way having had opportunities of seeing the country to the northwest of the Ohio, and being pleased with it, they settled on the lands thus granted to them. In this way the first settlers, both of French and English descent, were from slaveholding colonies, and the laws of those colonies having been extended to, and being in full operation at the time of the adoption of the ordinance, it was to have been expected that its provision for the prohibition of slavery would not be popular with many of them. These feelings of disapprobation at once evinced themselves by the larger and more intelligent slaveholders removing across the river into Louisiana, and taking with them their slaves, to prevent their being emancipated by the Ordinance. The poorer and less intelligent masters, each owning but a very few slaves, being ignorant of the English language and laws, and being also cut off from a knowledge of passing events, by there being then no mails running to their remote settlements, continued to hold and to treat their late slaves as if the Ordinance had not emancipated them. This state of things continued for a long time, in consequence of the ignorance of the negroes of the English language and of the mode of obtaining their rights, and from the fear of punishment if they attempted it, and also, from the odium which attached to those who should

aid them. To this should be added, that many of the officers in whose hands the law had placed the power, were themselves claimants of the negro services, and interested in continuing the then existing state of things. The long and extraordinary acquiescence in the continuance of the bondage of the French slaves (as they were called) encouraged those who can always find reasons for doing what will promote their own immediate interest, or what they like to do, to set up a right to the French negroes' services; some contending for it under the treaty of 1763, and some under the terms of cession from Virginia.

But it is useless to expose or dwell longer on the errors of these prejudiced and interested partisans. It is enough to confute and silence them, to recite the facts that the highest judicial tribunals of individual States and of the Federal Government, have decided and put the question at rest, that slaves cannot be lawfully held in the country northwest of the Ohio River. At an early period, it was so decided by the Supreme Court of Indiana; afterwards, a similar decision was made by the Supreme Courts of Missouri and Illinois; and in 1831 these decisions were concurred in and confirmed by the highest judicial authority of the United States. A doubt can no longer exist, that such a decision would have been made at any, even the earliest period after the adoption of the ordinance, if the question had been brought before the judiciary. Of course, the continuance of the remnant of French slaves for so long a time in Illinois, arose from the fact of its being quietly acquiesced in, and not brought to the decision of the Courts of justice. If the question had ever been brought before me, as Governor of the State, I would not have hesitated for a moment to decide, and, if necessary to have enforced the decision, that slavery

did not legally exist in Illinois, and of course all held in service, as such, were entitled to their freedom. This opinion I expressed in my Inaugural Address, and in messages to the Legislature.

Although the ordinance, from neglect to enforce it, was not made available for a considerable time, as it respected the French negroes held in servitude, it went into immediate operation from its adoption, so far as to exclude the further introduction of slaves into Illinois. No slaves were brought by those who acquired military lands from Virginia, or who were induced by other considerations to emigrate to the northwestern territory, from a conviction that they would become free under the Ordinance. With the exception therefore of some hundreds of French negroes who remained in the country, and continued in bondage for a time in violation of the Ordinance, that instrument effected the object of its enlightened and benevolent author in excluding slave emigrants, and making a non-slaveholding State of Illinois, and of all the other States formed out of the northwestern territory.

In addition to the causes already stated for creating a prejudice against the provision of the Ordinance, prohibiting slavery, many persons, particularly in Indiana and Illinois, had their prejudices further increased by their contiguity to slave-holding districts of country, and the opportunities furnished by this, as well as by the numerous emigrants who passed through them on their way to Missouri, to mingle and hear such representations as were calculated to dissatisfy them with the prohibitory clause in the Ordinance. To this must be added, as a further and more powerful influence, the fact that the high and influential territorial officers were from slaveholding States, and were not only the advocates, but exerted their potent influence to get the

prohibitory clause repealed by Congress, if possible; if not, to get it so modified as to admit of the holding of slaves, at least for a limited time.

These various influences operated to create dissatisfaction, particularly with the partisans of the territorial officers, and such citizens as were interested in, or were under the influence of the former system of servitude, and of course of that class of men to be found everywhere, who delight in exercising the rights and privileges of masters. All these causes produced excitement, and had their effect in elections, and repeatedly showed themselves in the form of petitions from the people and the legislatures to Congress, asking a repeal or modification of the clause of the Ordinance prohibiting slavery. To these applications, Congress uniformly and decidedly refused its assent, and sustained the prohibitory clause of the Ordinance. As instances of this, I will state, that in March, 1803, the celebrated John Randolph, of Virginia, as chairman of a committee of the House of Representatives of Congress, to which one of these petitions was referred, asking the suspension of the provision in the ordinance prohibiting slavery, made a report against it, which was concurred in by the House. In this report the following strong and highly approbatory language is used in relation to the ordinance—"That the rapid population of the State of Ohio sufficiently evinced, in the opinion of your committee, that the labor of slaves is not necessary to promote the growth and settlement of colonies in that region: That this labor, demonstrably the dearest of any, can only be employed to advantage in the cultivation of products more valuable than any known to that quarter of the United States: That the committee deem it highly dangerous and inexpedient to impair a provision wisely calculated to promote the happiness

and prosperity of the northwestern country, and to give strength and security to that extensive frontier. In the salutary operation of this sagacious and benevolent restraint, it is believed that the inhabitants of Indiana will, at no distant day, find ample remuneration for a temporary privation of labor and of emigration."

In March, 1804, another report was made, on a similar application from Indiana, by a committee of the House, of which Mr. Rodney, of Delaware, was chairman, in which a suspension for ten years of the anti-slavery provision was recommended, on the condition that the descendants of all such slaves should, if males, be free at the age of 25 years, and, if females, at the age of 21 years. In this report the House refused to concur. In February, 1806, another report was made recommending a suspension for ten years, by a committee of which Mr. Garnett, of Virginia, was chairman, with a similar result—the non-concurrence of the House. In February, 1807, a committee of the House, of which Mr. Parke, Delegate from Indiana, was chairman, made still another report in favor of suspending the prohibitory clause for ten years, in which the House again refused to concur. By what majorities these disapproving votes were given, is not stated on the Journals of the House of Representatives. But in November, 1807, Mr. Franklin, of North Carolina, as chairman of a committee of the Senate of the United States, to which had been referred a petition from the Legislative Council and House of Representatives of Indiana Territory, and also a remonstrance against the same from the citizens of Clark County in said Territory, made a report against the suspension of the prohibitory clause of the ordinance, which was concurred in by the Senate without a dissenting voice.

In alluding to these proceedings of Congress, Senator

Benton, in a speech he made in the Senate of the United States, on the 10th of June, 1850, said—"Thus five times in four years the respective Houses of Congress refused to admit even a temporary extension or rather re-extension of slavery into Indiana Territory, which had been, before the ordinance of 1787, a slave territory, holding many slaves at Vincennes. These five refusals to suspend the ordinance of '87 were so many confirmations of it. All the rest of the action of Congress on the subject, was to the same effect or stronger. The Missouri Compromise line was a curtailment of slave territory; the Texas annexation resolution was the same; the Ordinance of '87 itself, so often confirmed by Congress, was a curtailment of slave territory—in fact its actual abolition; for it is certain that slavery existed in fact in the French settlement of the Illinois, at that time; and that the Ordinance terminated it. I act then," he said, "in conformity to the long uniformly established policy of Congress, as well as in conformity to my own principles, in refusing to vote for the extension of slavery."

These repeated refusals of Congress to abrogate or alter the clause prohibiting slavery, the most important of the great fundamental articles of compact, established by the Ordinance between the original States and those to be formed out of the Northwest Territory, induced its disappointed advocates in Indiana (then including Illinois), in the year 1807, to authorize by a law of the Territory the indenture of slaves over fifteen years of age, for a specified term of years. In many cases it was extended in practice to ninety-nine years, or for a term which was intended to include the life of the party indentured. As a slave is not competent by law to make an agreement or contract, he had first to be made free before he could enter into the indenture.

But this was made a mere matter of form, being done simultaneously, and the master taking care that neither instrument should be valid until the other was executed. If a slave, after his master had signed his instrument of emancipation, and he was nominally free, should refuse to sign his indenture, the master had the right to send him out of the State, to sell him, and retain over him all his right as master. The indenture for a term equivalent to the duration of life, would not apparently change materially the condition of the slave; but it did so in this, that his condition is always better where there are but few slaves, as they are then more immediately under the care and protection of their masters. But above all the hearts of parents, who are indentured, find an inexpressible pleasure and a consoling comfort from the knowledge of the fact that their children will be free; males at thirty, and females at twenty-eight years of age, the times fixed by the Indiana law authorizing indentures.

It may be well to add—as an incident worth mentioning, particularly as showing the opinion and feeling that had their influence in bringing it about—the preamble to an act passed by the Legislature of Illinois to repeal this law of indenture, which repealing act was vetoed by the Territorial Governor; in this it is stated that, "whereas the act of the Legislature of this Territory, passed the 17th of September, 1807, is intended to introduce and tolerate slavery, under the pretence of voluntary servitude, in contravention of the paramount law of the land; and whereas such a system is calculated, in its operation, not only to prejudice the interest of individuals, but also, to introduce a host of people of color, who in time will become free, and at an age when they are unable to support themselves.

The territory consequently cannot be benefited by such a system, the adoption of which is contrary to the Ordinance, and the feelings and wishes of the people of this territory."

The same party, with the same views which led them, as described above, to countenance the continuance of the French servitude; to petition Congress to allow them to introduce and hold other slaves; and to authorize the introduction of negroes under indentures, induced them to pass a law authorizing the hiring of slaves from other States to labor at the salt works near Shawneetown. It is needless to say that all these acts were a violation, in form as well as in spirit, of the Ordinance of 1787.

It is proper I should add, that the foregoing remarks have reference to that part of the Northwest Territory which is now included in the States of Indiana and Illinois. Although Virginia granted to her citizens more land for military services in the country now embraced by the State of Ohio, than in any other part of the Territory which she ceded in 1784 to the United States, yet there being in the bounds of that State no such French population, possessed of slaves, but on the contrary its first settlers consisted chiefly of associations of citizens from non-slave holding States, who held large tracts of land, containing altogether many hundreds of thousands of acres, of which the principal were—"the Connecticut western reserve," bordering on Lake Erie; "the Ohio land company," composed of citizens from the New England States, for land on the Ohio and Muskingum Rivers; and "Symmes and his associates" of New Jersey, for land on the Rivers Ohio and the Miamis. These and other differences, which have been pointed out, in the origin and character of the first settlers of the east and west portion of the Northwest Territory,

will explain the opposite feelings and opinions entertained by them, in relation to the clause of the Ordinance prohibiting slavery. We have seen the conduct of Indiana and Illinois—that of Ohio both as a Territory and as a State, showed that she differed from them, and approved of the Ordinance in all its parts. To this it should be added that Michigan and Wisconsin, the remaining portions of the Northwest Territory, whose settlers having also chiefly emigrated from non-slave holding communities, both native and foreign, have concurred with Ohio in approving the Ordinance. Iowa, too, having from infancy grown up under the Ordinance, which had been extended over her by the "Missouri Compromise," and California, where slavery had been inhibited by the Spaniards before we acquired it, both of these States on coming into the Union complimented the Ordinance by adopting its peculiar language, and inscribing it in their constitution—"That neither slavery nor involuntary servitude, unless for punishment of crimes, shall ever be tolerated in these States."

After the division of Indiana into two territorial governments, which took place in 1809, the eastern or Indiana part, not being as much under the influence of the pro-slavery proclivities as the western or Illinois portion, the contests in the former became less violent. This continued to diminish with the increase of population, which came chiefly from Ohio and the Northern States, until two or three years before Indiana became a State (in 1816), when the last great struggle took place, in which, although the territorial officers took an active part in favor of the advocates of slavery, the result was so decisive and overwhelming, in favor of the anti-slavery party, as to have the effect of putting down the supporters of slavery, and an end to the slavery question in Indiana.

In effecting this, the most prominent and influential man was Jonathan Jennings, who served as a Delegate in Congress, and afterwards as Governor of the State.

In Illinois, which was separated from Indiana, and organized first as a Territorial Government in 1809, and then as a State Government, and was admitted into the Union in 1818, the strife was continued with more or less violence. It was strongly displayed in the election of the convention to form a constitution for the new State, when an effort was made before the people, and a still greater one, in the Convention, to authorize the toleration of slavery in the State. In this its advocates failed, but not despairing of ultimate success, they continued their efforts until 1822, when it was made the controlling question in the election of that year. And although I, the anti-slavery candidate, was elected Governor, the Legislature wanted but one member to have a majority of two-thirds in each House, in favor of submitting the question to the people whether there should be a convention called for altering the constitution; this one member was obtained in what I consider an unprecedented manner. Thus the question was submitted to the people under the influence of a two-thirds vote of the Legislature. Under the provisions of the constitution of 1818, when two thirds of the members of each House of the Legislature should submit the question to the people, if a majority of the voters at the next election should be in favor of it, a convention was to be called to revise the constitution.

The introduction of slavery was not openly avowed by all the advocates of a convention, as the object in view, but it was well known to be so, and not denied by many, though there were certainly other objections to the constitution of 1818, which had their influence in

increasing the desire for a convention to alter it. When this question came before the people, it produced peculiarly intense excitement always attendant on the agitation of the question of the extension of slavery; and which in this case was increased by the manner in which it had passed the Legislature; and the advantage intended to be taken of a temporary inequality in the representation, whereby portions of the State favorable to slavery would have a greater influence in the convention than they were justly entitled to. Having been placed in the lead, by the station assigned me, and my opinions and feelings being so warmly opposed to slavery as to make me leave my native state (Virginia), I soon placed my pen and exertions in requisition, and brought them to bear, doing all I could, personally and officially, to enlighten the people of Illinois, and prevent their making it a slave holding State. I trust I shall meet with indulgence from the zeal I have always felt in the cause, for adding, that it has ever since afforded me the most delightful and consoling reflections, that the abuse I endured, the labor I performed, and the anxiety I felt, were not without their reward: and to have it conceded by opponents as well as supporters, that I was chiefly instrumental in preventing a call of a convention, and making Illinois a slave holding State. We were sustained by a majority of about 1600 votes of the people, at the general election in August, 1824; and thus terminated the last struggle, the last effort of the slave party, to defeat the wise and philanthropic purposes of the Ordinance of 1787.

It would not be doing justice to the Ordinance, nor would what has been written deserve the name of a hasty sketch of its history, were I to omit to add some of the repeated and unprecedented sanctions it has received from Congress and the American people. We have

seen it was the offspring of the greatest statesman of our country; and no one can fail to see in it the kindred political features of its elder brother, the Declaration of American Independence. It has been shown with what extraordinary unanimity it passed the old Congress—but one member voting against it; nor was his particular objection to the Ordinance known. He had been serving in the convention in Philadelphia from its commencement, and had left it not only in despair but in disgust, and he reached New York, and took his seat in Congress just in time to give his solitary vote against the Ordinance. But from his political character, and being a northern man (Mr. Yates, of the State of New York), it is not unreasonable to suppose, that it did not arise from any objection he had to the anti-slavery provision. On the contrary, it would be fair to presume, that the clause, added before its final passage, for the restitution of fugitive slaves, which rendered the Ordinance the more acceptable to the ultra slavery partisans of South Carolina and Georgia, may have made Mr. Yates vote against it.

This brings to my recollection what I was told by Mr. Madison, and which I do not remember ever to have seen in print. The Old Congress held its sessions, in 1787, in New York, while at the same time the convention which framed the constitution of the United States held its sessions in Philadelphia. Many individuals were members of both bodies, and thus were enabled to know what was passing in each—both sitting with closed doors and in secret sessions. The distracting question of slavery was agitating and retarding the labors of both, and led to conferences and inter-communications of the members, which resulted in a compromise by which the northern or anti-slavery portion of the country agreed to incorporate, into the Ordinance and Constitution, the

provision to restore fugitive slaves; and this mutual and concurrent action was the cause of the similarity of the provision contained in both, and had its influence, in creating the great unanimity by which the Ordinance passed, and also in making the constitution the more acceptable to the slave holders.

Among the first laws passed by the first Congress and approved by President Washington, August 7th, 1789, was one to adapt the Ordinance to the new constitution of the United States. It thus received the sanction of Congress under the present constitution, as it had previously done of the Old Congress under the Articles of Confederation.

The 7th Congress passed an act, which was approved by President Jefferson, April 30, 1802, authorizing Ohio to form a State constitution and for her admission into the Union; "Provided the same shall be republican, and not repugnant to the Ordinance of the 13th of July, 1787, between the original States, and the people and States of the territory northwest of the River Ohio." This was the first of the States, trained during its minority under the government of the Ordinance, which was admitted at maturity into the Union; and no doubt its author felt a peculiar pleasure at being then President of the United States, and having it in his power to use his influence in shaping the terms of her admission, so as to carry out, and perpetuate, his original purpose in making permanent the great fundamental provisions of the Ordinance, by extending them to the States, as well as to the Territories, to be formed out of the Northwestern Territory.

On the 19th of April, 1816, the 14th Congress passed an act authorizing Indiana to form a State constitution, and for her admission into the Union; and on the 18th of April, 1818, the 15th Congress passed a similar law,

for the admission of Illinois. Both of these acts were approved by President Madison, and both contained similar provisoes—that their constitutions when formed should be "republican, and not repugnant to the Ordinance of July 13, 1787."

The 16th Congress passed an act, commonly known as the Missouri Compromise, authorizing the people of Missouri to form a constitution and State government "and to prohibit slavery in certain territories," approved by President Monroe, March 6, 1820, in which it is provided "That in all that territory ceded by France to the United States, under the name of Louisiana, which lies north of 36° 30′ north latitude not included within the limits of the State contemplated by this act, slavery and involuntary servitude, otherwise than in punishment of crimes, whereof the parties shall have been duly convicted, shall be, and is hereby forever prohibited: Provided always, that any person escaping into the same from whom labor or service is lawfully claimed in any State or Territory of the United States, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid." This act, by using language so similar to that contained in the Ordinance, recognizes and sanctions its provisions in relation to slavery, and extends them to all the territory owned by the United States west of the River Mississippi and north of 36° 30′, except the State of Missouri.

By the joint Resolution annexing Texas to the United States, passed by the 28th Congress, and approved by President Tyler March 1st, 1845, it is stipulated, that such States as may be formed out of that portion of said territory lying south of 36° 30′ north latitude, commonly known as the Missouri Compromise line, shall be admitted into the Union with, or without slavery, as the people of each State, asking admission, may desire: And

in such State or States as shall be formed out of said territory, north of said Missouri Compromise line, slavery or involuntary servitude (except for crimes) shall be prohibited."

The act passed by the 30th Congress, and approved by President Polk, August 14, 1848, to establish a territorial government for Oregon, provides "That the inhabitants of said Territory shall be entitled to enjoy all and singular the rights, privileges, and advantages granted and secured to the people of the Territory of the United States, northwest of the River Ohio, by the articles of compact, contained in the ordinance for the government of said Territory, on the 13th day of July, 1787, and shall be subject to all the conditions and restrictions and prohibitions in said articles of compact imposed upon the people of said Territory." It cannot escape notice, that this, the last of the many acts of Congress approbatory and confirmatory of the Ordinance, should be most complimentary of it. The language used represents the Ordinance as a boon by which the people of Oregon became entitled to enjoy all the rights, privileges and advantages which that measure granted and secured to the people of the Northwestern Territory.

This statement shows that between 1787 and 1854, when the Missouri compromise was repealed, a period of sixty-seven years, eight different Congresses passed, and six different individuals acting as Presidents of the United States, viz: Washington, Jefferson, Madison, Monroe, Tyler, and Polk, approved eight laws of the United States, enacting and re-enacting, sanctioning and confirming and extending, as well in length of time, as extent of space, the ordinance of 1787. Yes—all sections of our extensive and diversified country, and all the numerous parties into which our people have been divided since our confederation was formed, have given to

it their approbation and sanction, and that also to a measure involving interests, of all others, the most exciting, and on which there has even been the greatest and most angry diversity of opinions. It is believed that no similar measure ever received such signal and repeated proofs of the approbation of the people, as this Ordinance has done. To those, who will trace the history of this question, it will appear marvellous, and show the profound wisdom of those who framed such an efficacious measure for our country. Contrast these evidences of approbation of the Ordinance, with those given to the Constitution of the United States, and it will result greatly in favor of the former. It will show, if unanimity of opinion and repetition of legislative action can give weight, that the Ordinance is entitled to even more than the Constitution, which encountered much opposition in the national convention that made it, in which it received the signatures or votes of but thirty-nine out of fifty-five members who attended the convention, and was ratified by small majorities in many of the State conventions.

To a cool and dispassionate observer, who has a knowledge of the enlightened origin, the great popularity, and beneficial effects of the ordinance, it seems to be incredible that it should have been repealed; and especially denounced as violating the great principles on which our Government is founded. Yet such has been the fact, and what adds to the astonishment is, that this has been done by men professing to be of the Jefferson school of politics. The inconsistency is truly mortifying to those who believe, as well in the capacity of man to govern himself, as in the wisdom and suitability of our political institutions to promote, above all others, his happiness.

In conclusion I will say, the wisdom, expediency, and salutary practical effects of the Ordinance, could not be

more clearly shown than by contrasting its operations with those of its substitute. Under the ordinance from 1787 to 1854, the Territories subject to it were quiet, happy, and prosperous. Since its principles were repudiated, in 1854, we have had nothing but contention, riots, and threats, if not the awful realities of civil war, which painful state of things has been brought about by the substitution of the legislation of 1854 for that of 1787, long consecrated as it had been by time, and by the approbation of the greatest and best men of our country.